

HOGAN & HARTSON  
L.L.P.

DAVID L. SIERADZKI  
COUNSEL  
DIRECT DIAL (202) 637-6462  
INTERNET DS0@DC2.HHLAW.COM

DOCKET FILE COPY ORIGINAL

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

August 6, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, D.C. 20554

RECEIVED  
AUG 6 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Smith Bagley, Inc. Petition for Designation as an Eligible  
Telecommunications Carrier Under 47 U.S.C. § 214(e)(6),  
CC Docket No. 96-45, DA 99-1331**

Dear Ms. Salas:

On behalf of the Personal Communications Industry Association, I am submitting reply comments in the proceeding referred to above. Please contact me if you have any questions.

Respectfully submitted,



David L. Sieradzki  
Counsel for the Personal  
Communications Industry Association

Enclosures

cc: Attached service list

No. of Copies rec'd 012  
List ABCDE

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
AUG 6 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Smith Bagley, Inc. )

Petition for Designation as an )

Eligible Telecommunications Carrier )

Under 47 U.S.C. § 214(e)(6), )

FCC 97-419 )

CC Docket No. 96-45

DA 99-1331

**REPLY COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") 1/ hereby replies to the comments filed on the June 2, 1999 Petition for Designation as an Eligible Telecommunications Carrier ("ETC") submitted by Smith Bagley, Inc. ("Smith Bagley"), seeking designation for those parts of its service area in Arizona and New Mexico comprised of federally reserved Native American lands ("Petition").

PCIA supports an expeditious grant of the Petition. By expeditiously granting the Smith Bagley Petition, the Commission would again demonstrate that a CMRS provider is as capable as any wireline carrier of providing universal service to areas supported by federal mechanisms. 2/ PCIA agrees with Western Wireless

---

1/ PCIA is an international trade association representing the interests of both commercial and private users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Messaging Alliance, the PCS Alliance, the Wireless Broadband Alliance, the Mobile Wireless Communications Alliance, the Site Owners and Managers Association, and the Private System Users Alliance.

2/ *Federal-State Joint Board on Universal Service*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report

that designating Smith Bagley as an ETC for its service areas on Indian reservations in Arizona and New Mexico would demonstrate the efficacy of wireless carriers providing universal service in underserved and unserved areas. As the FCC has long held, wireless carriers may -- indeed, must -- be designated as ETCs anywhere they satisfy the statutory criteria, 3/ as Smith Bagley apparently does for the subject reservations.

In fact, CMRS carriers can in some cases provide basic telephone service more economically than incumbent local exchange carriers ("ILECs"). 4/ Designating Smith Bagley as an ETC for the Navajo, Hopi, Apache and Zuni reservation lands in Smith Bagley's Arizona and New Mexico service area will provide some of those reservations' consumers with their first affordable basic telephone services, and all of the consumers on those reservations will benefit from facilities-based wireless-wireless competition.

---

and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 at ¶ 72 (rel. May 28, 1999) ("*Universal Service Seventh Report and Order*").

3/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8858 ¶ 145 (1997) ("*Universal Service First Report and Order*") ("any telecommunications carrier using any technology, *including wireless technology*, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1)") (emphasis added); *Seventh Report and Order*, FCC 99-119 at ¶ 15 ("all carriers that provide the supported services, regardless of the technology used, are eligible for designation as an [ETC]").

4/ Western Wireless at 3 & n.6.

In addition, designating Smith Bagley as an ETC would clearly help provide Native Americans on the subject reservations with improved access to telecommunications service, a long-held goal of the Commission. <sup>5/</sup> This will translate into much-needed expanded economic opportunities for the residents and businesses on these reservations. Moreover, granting petitions such as Smith Bagley's will help provide access to critically important emergency services.

For these reasons, the Commission should reject the arguments of opposing commenters that the Commission should reject the Petition or delay considering it. <sup>6/</sup> First, the Commission need not wait until it makes a final determination on minimum local usage for ETCs before granting the Smith Bagley Petition. <sup>7/</sup> That issue remains unresolved for all carriers, whether they be CMRS providers, ILECs, or wireline competitive local exchange carriers ("CLECs"). <sup>8/</sup>

---

<sup>5/</sup> *Commission Seeks to Promote Universal Service in Tribal Lands and Other Insular Areas*, Report No. 99-32 (rel. Aug. 5, 1999); *FCC to Explore Ways to Extend Terrestrial and Satellite Wireless Services to Individuals Residing on Tribal Lands*, WT Docket No. 99-266, WT Report No. 99-23, FCC-205, (rel. Aug. 5, 1999).

<sup>6/</sup> *Contra* Comments of Arizona Telephone Company ("Arizona Telephone") at 8-9; Comments of the National Telephone Cooperative Association ("NTCA") at 4-6.

<sup>7/</sup> NTCA Comments at 5; Arizona Telephone Comments at 9.

<sup>8/</sup> See 47 C.F.R. § 54.101(a)(3) ("Local usage' means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users."); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 21252 (1998); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514 (1997).

Nonetheless, the FCC and the state commissions have designated hundreds of carriers, including CMRS providers, as ETCs under Sections 214(e)(6) and 214(e)(2) of the Act, even before this issue is resolved. 9/ Each of these ETCs, including Smith Bagley, intend to comply with any requirement the Commission may adopt regarding local usage. 10/ Thus, the fact that the FCC is still considering the minimum local usage issue does not mean there should be any delay in enabling Smith Bagley to provide universal service to the Native American reservations it seeks to serve.

Moreover, the FCC should emphatically reject parties' calls to impose conditions relating to the rates Smith Bagley may charge for universal service. 11/

---

9/ See, e.g., *Saddleback*, 13 FCC Rcd 22433; *Fort Mojave*, 12 FCC Rcd 22947; *Provision of Universal Service to Telecommunications Consumers*, Case No. 8745, Order No. 73802, 88 Md. PSC 239, 1997 WL 1008436, \*3 (1997); *Yelm Telephone Company, et al*, Docket No. UT-970333 (Washington Utilities and Transportation Commission, effective date Dec. 27, 1997); *Eligible Telecommunications Carriers in Arkansas*, Docket No. 97-326-U (Arkansas Public Service Commission, Nov. 7, 1997); *Designation of Eligible Telecommunications Carriers Under Part 54 of Title 47 of the Code of Federal Regulations*, Docket No. 05-TI-162 (Public Service Commission of Wisconsin, Dec. 23, 1997) ; *All Incumbent Local Exchange Carriers, Sprint PCS, and MGC Communications, Inc., to Designate Eligible Communications Carriers Pursuant to the Federal Communications Commission's Report and Order (FCC 97-157) in the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45)*, Resolution T-16105 (Public Utilities Commission of California, Dec. 16, 1997).

10/ In fact, if an ETC were to fail to meet this requirement, or fails to provide any other functionality specified in Section 54.101(a) of the rules, 47 C.F.R. § 54.101(a), that ETC would risk immediately losing its ETC status and all attendant federal universal service support.

11/ Arizona Telephone Comments at 9.

Section 254(b) of the Act requires the FCC's policies, as a general matter, to ensure that universal service is "affordable," but an "affordability" showing by an ETC applicant is not a prerequisite for ETC designation under either Section 214(e) of the Act or Section 54.101 of the rules. Under Section 332(c) of the Act, the rates charged by non-dominant wireless carriers are to be dictated by marketplace pressures, not by regulatory fiat, and the ETC designation process provides no grounds for undoing this sensible deregulatory policy. 12/

In addition, the FCC's pending consideration of issues involving portability of support 13/ cannot be used as an excuse to delay FCC action on the Smith Bagley Petition. Those filings are completely irrelevant to the public interest determinations the FCC must make with respect to the Smith Bagley ETC Petition.

Finally, the FCC should make it clear that baseless arguments against designation of CMRS providers as ETCs, such as the contentions raised by the opposing parties in this proceeding, will not be tolerated. The 1996 Act and the Commission's rules and policies clearly contemplate a much more straightforward path to participation in the new federal universal service program.

---

12/ See, e.g., *Seventh Report and Order* at ¶ 72.

13/ NTCA Comments at 5-6; Arizona Telephone Comments at 9.

For all the foregoing reasons, the Commission should expeditiously grant the Smith Bagley Petition.

Respectfully submitted,

**PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

By: Angela E. Giancarlo/AL  
Angela E. Giancarlo  
Director, Federal Regulatory Affairs  
PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314-1561  
(703) 739-0300

By: David Sieradzki  
Michele C. Farquhar  
David L. Sieradzki  
Ronnie London  
HOGAN & HARTSON, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
(202) 637-5600

Counsel for the Personal  
Communications Industry Association

August 6, 1999

## SERVICE LIST

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B201  
Washington, D.C. 20554

The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B115  
Washington, D.C. 20554

The Honorable Harold Furchgott-Roth  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A302  
Washington, D.C. 20554

The Honorable Michael K. Powell  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A204  
Washington, D.C. 20554

The Honorable Gloria Tristani  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-C302  
Washington, D.C. 20554

Kathryn Brown  
Chief of Staff  
Office of Chairman William E. Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W., 8-B201  
Washington, D.C. 20554

Ari Fitzgerald  
Legal Advisor  
Office of Chairman William E. Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Thomas Power  
Legal Advisor  
Office of Chairman Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B201  
Washington, D.C. 20554

Linda Kinney  
Legal Advisor  
Office of Commissioner Ness  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Dan Connors  
Legal Advisor  
Office of Commissioner Ness  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Kevin Martin  
Legal Advisor  
Office of Commissioner Furchtgott-Roth  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Kyle D. Dixon  
Legal Advisor  
Office of Commissioner Powell  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Peter Tenhula, Legal Advisor  
Office of Commissioner Michael K. Powell  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554



Karen Gulick  
Legal Advisor  
Office of Commissioner Gloria Tristani  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Sarah Whitesell  
Legal Advisor  
Office of Commissioner Gloria Tristani  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-A445  
Washington, D.C. 20554

Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

James Schlichting, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Steven Weingarten, Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Paul D'Ari, Chief, Policy & Rules Branch  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 4-A325  
Washington, D.C. 20554

David Krech  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Larry Strickling, Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-C450  
Washington, D.C. 20554

Lisa Zaina, Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-C451  
Washington, D.C. 20554

Irene Flannery, Chief  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-A426  
Washington, D.C. 20554

Charles Keller, Deputy Chief  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Katie King  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

International Transcription Service  
Federal Communications Commission  
1231 20th Street, N.W.  
Washington, D.C. 20554

Gerald Vaughan  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 3-C250  
Washington, D.C. 20554

Dale Hatfield  
Office of Engineering & Technology  
Federal Communications Commission  
445 Twelfth Street, S.W., 7-C155  
Washington, D.C. 20554

Michele Ellison  
Office of General Counsel  
Federal Communications Commission  
445 Twelfth Street, S.W., 8-C758  
Washington, D.C. 20554

Suzanne Tetreault  
Office of General Counsel  
Federal Communications Commission  
445 Twelfth Street, S.W., 8-A668  
Washington, D.C. 20554

Sharon Franklin  
Office of General Counsel  
Federal Communications Commission  
445 Twelfth Street, S.W., 8-C833  
Washington, D.C. 20554

Ellen Blackler  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-C413  
Washington, D.C. 20554

Mark Nadel  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 5-B551  
Washington, D.C. 20554

Eric Butler  
Office of Communications Business  
Opportunities  
Federal Communications Commission  
445 Twelfth Street, S.W.,  
Washington, D.C. 20554

Dave Fisher, Chair  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Nancy McCaffree  
Vice Chair  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Bob Rowe  
Commissioner  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Bob Anderson  
Commissioner  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Gary Feland  
Commissioner  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Steve Stevens, Commissioner  
Crow Tribe Public Utility Commission  
P.O. Box 159  
Crow Agency, MT 59022

Clara Nomee  
Crow Tribe Public Utility Commission  
P.O. Box 159  
Crow Agency, MT 59022

Bonnie Lorang  
Universal Service Program  
Universal Access Program & E-Rate  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Kate Whitney  
Universal Service Program  
Universal Access Program & E-Rate  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

David A. LaFuria  
Samuel F. Cullari  
Lukas, Nace Gutierrez & Sachs,  
Chartered  
1111 Nineteenth Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
Attorneys for Smith Bagley, Inc.